

**TESTIMONY
SB 369**

**Before the Senate Business, Labor and Economic Affairs Committee
February 8, 2007**

**By Gary Wiens
Montana Electric Cooperatives' Association**

Madam Chair, members of the committee, for the record, my name is Gary Wiens, representing Montana Electric Cooperatives' Association. The 25 consumer-owned co-ops we represent provide electricity service to nearly 400,000 Montanans.

As Senator Smith indicated, this is a bill that would eliminate from the electric cooperative enabling law an unsolicited 2001 amendment. Senate Bill 369 would allow Flathead Electric, a locally owned, locally governed co-op, to charge a fair rate for attachment of cables to the co-op's poles. Because of the amendment, the law now says Flathead Electric can charge attachment rates no higher than the Federal Communications Commission attachment formulas. Under these formulas, cable TV is charged a substantially lower rate than telecommunications companies.

Although this bill addresses a dispute between two private companies, it is primarily the anomaly of the 2001 amendment being inserted into our co-ops' enabling law that brings us here today.

From our perspective, the 2001 amendment now in law remains troublesome.

It's troublesome in part because it singles out one of our electric cooperatives for regulation in an area where no other co-op is regulated. This provision is unique in Montana statutes. Not only the co-op enabling law, but also provisions of electric industry law in Montana specifically prohibit regulation of Montana's electric cooperatives.

This provision is also troublesome because it has ramifications for all electric cooperatives. Any co-op buying poles and wires from an investor-owned utility could be subjected to the regulation imposed by the 2001 amendment now in law.

The Legislature's rationale in declining to regulate cooperatives has always been to point out that our cooperative utilities are locally owned and governed by co-op trustees democratically elected by their consumer-owners. To date, we think the co-ops have earned the local control to which they have been entrusted.

The same applies to the question of whether co-ops should have local control on setting rates to charge cable TV and telecommunications companies to attach their cables.

Congress pointed this out with passage of the Communications Act in 1978, when it deliberately chose not to regulate co-ops on pole attachments, declaring pole rates charged by cooperative utilities are "already subject to a decision-making process based upon constituent needs and interests." In 1996, Congress reaffirmed this exemption with passage of the Telecommunications Act.

Contrary to what you might hear today, the 2001 amendment was not welcomed. We ultimately agreed to it and, at the behest of the taxation committee, negotiated language from the original amendment. But our acceptance only occurred because, not only Flathead Electric, but electric co-ops across the state were caught between a rock and a hard place. That's because the underlying bill to which this amendment was attached gave a much-needed update to the electric co-op section of the state's 1939 co-op enabling law.

Another reason this amendment is troublesome is that it ties Flathead Electric's hands, making it difficult for the co-op to respond to changes occurring in their local service area. The biggest change that has occurred is that the pure cable TV company that sought the 2001 amendment was sold and its successor has morphed into a cable TV-telecommunications company. Bresnan is licensed by the Public Service Commission as a full-fledged telecommunications company, providing Internet service as well as phone service. It is competing head to head with the local telephone company as well as other

Internet providers. Because of this change, Flathead Electric has attempted without success to charge Bresnan the higher telecommunications rate.

You may hear today from opponents to this bill that Bresnan should not have to pay the higher telecommunications rate because the FCC has not yet formally classified cable companies providing voice over Internet – digital phone service – as a telecommunications service.

There are a number of challenges around the country to the lower cost for cable TV when cable is used for telecommunications purposes. At least one federal court has ruled that the FCC's inaction on this matter does not preclude states from deciding that digital voice is telecommunications.

On Jan. 18, 2007, a Missouri federal district court ruled that, although the FCC has not yet formally classified Voice over Internet Protocol as telecommunications, states have the authority to do so.

Also, as amended by the 1996 Telecommunications Act, the federal pole attachments statute states that the lower cable TV attachment rate-setting formula applies "to the rate for any pole attachment used by a cable television system solely to provide cable service."

These federal actions indicate the FCC's silence is not a green light for cable television companies providing voice over Internet to avoid the higher pole attachment rate for telecommunications companies.

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In summary, Senate Bill 369 boils down to a question of fairness and restoring local control to one of Montana's electric cooperatives. This bill is also about deciding whether an anomaly in the co-op enabling law that singles out one co-op and has ramifications for all electric co-ops should be removed. As such, we urge a do-pass recommendation on this bill.



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Telecommunications

Service Provider Details

(as of 2/7/2007 10:14:38 PM)

Registration Details For Selected Service Provider

LEGAL NAME AND BUSINESS STREET ADDRESS

Company Name: Bresnan Broadband of Montana, LLC
DBA(s): Bresnan Broadband of Montana, LLC

Bresnan Communications
Bresnan Business Services

Address: 1127 Alderson Avenue
Billings, MT 59102
US

MAILING ADDRESS

Address: 1127 Alderson Avenue
Billings, MT 59102 US

Contact Information:

Address:

State of Montana
Public Service Commission
1701 Prospect Ave
P.O. Box 202601
Helena, MT 59620-2601

Telephone:

Main Switchboard:
(406) 444-6199 V/TDD

Consumer Complaints:
(800) 646-6150 V

Facsimile (FAX):
(406) 444-7618

Other:

File a Complaint:
[click here](#)

Comment on Proceedings:
[click here](#)

Contact PSC Webmaster:
psc_webmaster@state.mt.us

REGULATORY CONTACT PERSON

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Last Name: Bresnan
Title:

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CONSUMER COMPLAINTS CONTACT PERSON